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IDAHO PUBLIC
UTILITIES COMMISSION

January 19, 2011

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720

Re: Intermountain Wind LLC—GNR-E-10-04

Dear Ms. Jewell:

Enclosed for filing in the above matter, please find an original and seven copies of Reply Comments of Intermountain Wind LLC.

Kindly return a file stamped copy to me.

Very Truly Yours,
McDevitt & Miller LLP

Dean J. Miller

DJM/hh
Enclosures

ORIGINAL

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE JOINT PETITION OF IDAHO POWER COMPANY, AVISTA CORPORATION, AND ROCKY MOUNTAIN POWER TO ADDRESS AVOIDED COST ISSUES AND JOINT MOTION TO ADJUST THE PUBLISHED AVOIDED COST RATE ELIGIBILITY CAP.	**Case No. GNR-E-10-04** **REPLY COMMENTS OF INTERMOUNTAIN WIND**

COMES NOW Intermountain Wind LLC (Intermountain) and, in accordance with the procedural schedule previously established, submits the following Reply Comments.

As noted in its initial Comments, Intermountain is a family owned enterprise seeking to develop a single 10 AMw wind generation QF facility upon lands owned by family members in Bonneville County. The project is in the late stage of development—all interconnection study fees have been paid; the required studies have been completed; all necessary land use approvals have been obtained. Intermountain is in the final stages of contract negotiations with PacifiCorp for the execution of a power sales agreement.

The Commission's solicitation of comments in this proceeding has produced a large number of comments, touching on a wide variety of issues. Rather than attempt a comprehensive survey of all the comments and issues presented, in these Reply Comments, Intermountain will focus on only three topics, which are of critical concern to " true-PURPA" projects:

For Small PURPA Projects a Shift to IRP Methodology is Equivalent to a Complete Moratorium

Of all the assertions contained in the Comments of the utility companies, the most farfetched is the claim that after the avoided cost eligibility cap is lowered to 100Kw, renewable energy development will proceed ahead through the IRP methodology.

This assertion is not even semi-plausible for at least these reasons:

First, as correctly noted in the Public Comments of Renewable Northwest Project, the utility companies have not made any commitment of additional personnel and resources necessary to manage the increased complexity of individually negotiated contracts. The utility companies have not offered any commitment to act upon and present to the commission for consideration every request for negotiation within a fixed time. As RNP notes, a mere claim that the companies' proposal is not a moratorium does not "...demonstrate a meaningful commitment to maintaining PURPA activity during a workshop process." (RNP Comments, Pg. 5).

Second, the avoided costs rates resulting from an IRP based methodology will never produce rates sufficient to make small scale PURPA projects viable. The Commission's surrogated avoided cost methodology is a forward looking, incremental cost approach in which a new PURPA project, in effect, competes against new generating resources the utility would have constructed but for the addition of the PURPA resource.

This is consistent with the statutory definition of avoided costs. In contrast, an IRP-based methodology, based on utility power supply models, is a backward looking embedded cost approach in which the new PURPA project, in effect, competes against the utility's embedded generating resource base, which likely includes heavily depreciated coal plants or seasoned hydro electric facilities. Rates produced under this methodology will always be lower than forward looking rates, and while IRP based rates may be adequate for large scale projects with economies of scale, they will always be inadequate for small, true PURPA projects, lacking economies of scale or scope.

The Commission's Announced Intention to Make any Decision in this Matter Effective December 14, 2010, is Subject to Substantial Legal Doubt

In Order No. 31231, the Commission purports to make its decision to reduce the eligibility cap effective December 14, 2010, even though a decision on the merits of eligibility reduction will likely not occur until February of 2011.

As noted above, Intermountain is in the final stage of contract negotiation for a power sales agreement and hopes to execute such an agreement within a matter of days. Should the Commission, against logic and good policy, decide to reduce the eligibility cap effective December 14, 2010, Intermountain fears PacifiCorp will not submit the contract for approval, in reliance of the purported December 14 effective date of eligibility reduction.

Accordingly, Intermountain concurs in the Comments of the Northwest and Intermountain Power Producers Coalition, which raise legal doubt about the Commission's proposal. (NIPCC Comments, Pg. 11).

The NIPCC Comments point to the regulatory doctrines of the prohibition against retroactive rate making and the filed rate doctrine. Intermountain agrees those doctrines are applicable here. In addition, in Intermountain's view, these doctrines are sub-sets of the more general proposition that as a legislative agency, the Commission may only act prospectively. The Commission does not have authority to look back in time and rearrange legal rights that existed on a certain day in the past. Retrospective readjustment of legal rights is purely a judicial function, and, as been said many times, the Commission is not a court.

In light of this, Intermountain urges the Commission to think carefully about its proposed retroactive effective date. As many parties have argued, reduction of the eligibility cap would be bad public policy. The last thing the Commission should do is to compound policy error with legal error.

If Any Reduction in Eligibility is Thought Necessary, it Should be Narrowly Drawn

As many parties have correctly observed, the only current problem in PURPA implementation, which might possibly justify a reduction in rate eligibility, is that of commercial scale wind projects being disaggregated into multiple legal entities each of which then qualifies for published avoided costs. In Intermountain's opinion all other issues raised by the Joint Petition are ones that can be discussed and resolved without the necessity of the proposed, across-the-board reduction of rate eligibility, regardless of motive power or actual project size.

As noted above, the offer of the utility companies to implement IRP based contracting, in place of published avoided costs, is illusory. It is not a solution to the problem of a moratorium that sweeps broader than necessary.

Other parties have suggested that the reduction of rate eligibility apply only to projects with wind as the motive force, leaving the current eligibility cap in place for other generation technologies. Intermountain believes this approach is ill-advised, for two reasons:

First, it overlooks the meritorious claims of community-scale wind projects, such as Intermountain, to obtain published avoided costs.

Second, it would have market-skewing effects. As the Commission has repeatedly said, good policy requires that the regulator not attempt to handicap generation technologies, choosing one over the other. Rather, generation technologies should compete with each other, based on their respective economics and other attributes in a market-based way. An eligibility cap applied to community scale wind projects, but not to similarly sized projects with other motive force, would do exactly what the Commission has said should not be done.

Because neither the utilities IRP based proposal nor the suggestion to distinguish by generation type are reasonable solutions to the bad effects of a blanket moratorium, Intermountain endorses the concept advanced by Renewable Northwest Project that "a better interim measure than lower the published rate threshold may be to prospectively adopt common ownership and control criteria designed to limit PURPA published rates to true-community scale projects." (RNP Comments, Pg. 7).

The Comments of the Idaho Conservation League take RNP's general concept a step further and propose more specific criteria: (1) whether the projects have common ownership and control; (2) whether the projects can operate in a coordinated manner;

(3) whether the projects share the same point of interconnection; and (4) whether the projects will be built within 12 months of each other.

In light of this Intermountain suggests the Commission encourage the parties to consider, discuss and potentially propose a suspension regime along these lines. In this regard, Intermountain understands that Reply Comments to be filed by the Idaho Conservation League and Renewable Northwest Project will contain a more specific proposal that further elaborates a common ownership test. Intermountain endorses the ICL/RNP proposal as a workable draft for discussion by interested parties.

DATED this 14 day of January, 2011.

INTERMOUNTAIN WIND LLC

By: _____
Dean J. Miller
Attorney for Intermountain Wind LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2011, I caused to be served, via the method(s) indicated below, true and correct copies of the foregoing document, upon:

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